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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 CORY O'NEAL BREWER,

Case No. 3:20-cv-00396-MMD-CLB

7 Petitioner,

ORDER

8 v.

9 WILLIAM GITTERE, *et al.*,

10 Respondents.  
11

12 In this habeas corpus action, the Respondents filed a motion to dismiss (ECF No.  
13 20) on January 29, 2021. *Pro se* Petitioner Cory O'Neal Brewer filed an opposition to that  
14 motion (ECF No. 33), and Respondents replied (ECF No. 37). On May 20, 2021, as further  
15 response to the motion to dismiss, Brewer filed a motion to amend petition (ECF No. 32)  
16 with a proposed amended petition attached (ECF No. 32-1). Respondents filed an  
17 opposition to that motion (ECF No. 34), and Brewer replied (ECF No. 34).

18 A petition for writ of habeas corpus "may be amended or supplemented as  
19 provided in the rules of procedure applicable to civil actions." 28 U.S.C. § 2242; *see also*  
20 Rule 12, Rules Governing Section 2254 Cases. Federal Rule of Civil Procedure 15(a)  
21 permits a party to amend a pleading with the opposing party's written consent or the  
22 court's leave. *See* Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when  
23 justice so requires." *Id.* "Courts may decline to grant leave to amend only if there is strong  
24 evidence of 'undue delay, bad faith or dilatory motive on the part of the movant, repeated  
25 failure to cure deficiencies by amendments previously allowed, undue prejudice to the  
26 opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc.'"

1 *Sonoma County. Ass'n of Retired Employees v. Sonoma County*, 708 F.3d 1109, 1117  
2 (9th Cir. 2013) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

3 Brewer filed this motion for leave to amend in response to Respondents' motion to  
4 dismiss, apparently seeking to cure shortcomings in his petition disclosed by the motion  
5 to dismiss. Specifically, it appears that Brewer seeks to amend to present a fully  
6 exhausted petition. The Court perceives no undue delay, bad faith, or dilatory motive on  
7 Brewer's part, and he has not repeatedly failed to cure the deficiencies in his pleading  
8 that he seeks to cure by this amendment. Brewer filed his motion to amend within a  
9 reasonable amount of time—given that he is incarcerated and appears *pro se*—after the  
10 motion to dismiss was filed. Respondents do not make a showing that the amendment  
11 will be futile. Furthermore, the Court determines that Respondents will not be unduly  
12 prejudiced if Brewer is allowed to amend his petition. The Court will grant Brewer's motion  
13 for leave to file his amended petition and will set a schedule for Respondents to respond  
14 to the amended petition.

15 It is therefore ordered that Brewer's motion to amend petition (ECF No. 32) is  
16 granted. Brewer is granted leave of court to file his amended petition. The Clerk of the  
17 Court is directed to separately file Brewer's first amended petition for writ of habeas  
18 corpus (ECF No. 32-1).

19 It is further ordered that Respondents' Motion to Dismiss (ECF No. 20) is denied,  
20 without prejudice, as moot.

21 It is further ordered that Respondents will have 60 days from the date of this Order  
22 to file an answer or other response to Brewer's first amended habeas petition. In all other  
23 respects the schedule set forth in the order entered October 1, 2020 (ECF No. 15) will  
24 remain in effect.

25 DATED THIS 12<sup>th</sup> Day of July 2021.

26  
27   
28 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE